Calendar No. 431

99TH CONGRESS *1st Session*	SENATE	REPORT 99-196

"CONTROLLED SUBSTANCE ANALOGS" ENFORCEMENT ACT OF 1985

REPORT

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ON

S. 1437

NOVEMBER 21 (legislative day, NOVEMBER 18), 1985.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
54-330 O WASHINGTON : 1985

S523-16

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REPORT
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"CONTROLLED SUBSTANCE ANALOGS" ENFORCEMENT ACT OF 1985

NOVEMBER 21 (legislative day, NOVEMBER 18), 1985.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1437]

The Committee on the Judiciary, to which was referred the bill (S. 1437) to create new penalties for the manufacture, distribution, and possession of controlled substance analogs intended for human consumption, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

I. BACKGROUND AND NEED FOR LEGISLATION

A new epidemic of drugs varying in but slight degree from the most dangerous compounds currently proscribed by the Controlled Substances Act has demonstrated that the Act as presently structured is not alone sufficient to regulate the flow of illicit drugs. S. 1437, the Controlled Substance Analogs Enforcement Act, is necessary to close the loopholes that enable underground chemists to evade our Nation's drug laws.

Confined by Federal drug legislation that ties unlawful conduct to precise chemical definitions, law enforcement authorities have long found themselves at least one step behind drug dealers who possess certain rudimentary scientific abilities. Thus in the 1960's, certain mescaline derivatives created great problems until controlled under the Drug Abuse Control Amendments and their successor legislation, the Controlled Substances Act (CSA). In the 1970's, various analogs of PCP and methaqualone flourished until eventually brought within the exact definitions of the Act. Again

in the 1980's the drug laws have been circumvented by profiteers capable of making minor alterations in the molecular structure of a controlled substance. Recent analogs have been based largely on the substances meperidine and fentanyl, from which models an almost infinite number of imitations can be derived. For example, the American Chemical Society notes:

> Fentanyl is not a simple molecule, and it turns out that a vast number of relatively minor modifications of its molecular structure result in compounds that also act as potent narcotics—in some cases, many times as potent as fentanyl. Tinker with a side chain here, add a halogen there, and the result is still probably a chemical that packs a powerful wallop, a chemical that can be sold on the street as heroin, and a chemical that might very well be as legal as sugar. ["Controlled Substance Analogs Enforcement Act," hearings before the Committee on the Judiciary, U.S. Senate, 99th Congress, 1st sess. (1985)].

The Comprehensive Crime Control Act of 1984 partially corrected the structural deficiencies of the Controlled Substances Act. Section 508 of the 1984 measure [21 U.S.C. 811(h)] gives the Attorney General authority to list a substance temporarily under schedule I of the CSA if he finds such action necessary to avoid imminent hazard to the public safety. These emergency scheduling procedures were used for the first time when the fentanyl analog 3-methylfentanyl was temporarily listed in schedule I effective April 25, 1985. Methamphetamine and MDA analog MDMA was similarly scheduled on July 1 of this year; meperidine analogs MPPP and PEPAP were so scheduled effective August 12, 1985.

The emergency scheduling procedure, however, is entirely reactive and can only operate after a controlled substance analog has already been shown to pose a severe risk to the public health. The legal and scientific analysis required to pinpoint first the existence, composition, and circulation of a substance, and then to document its devastating effect, takes time (and, indeed, the emergency scheduling procedures themselves contain an automatic 30-day lag period). Until that usually lengthy process has been completed and the substance is formally proscribed, traffickers in the drug are immune to the penalties of the Controlled Substances Act. Even after the substance has finally been scheduled, of course, another minor alteration in its structure begins the entire process afresh.

The Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301, et seq.] is also inadequate to combat the analog problem. 21 U.S.C. 355(a) makes it unlawful to introduce a "new drug" into interstate commerce until certain conditions have been met; this statute, however, is not aimed primarily at the distribution of illicit, addictive drugs patterned after schedule I or schedule II compounds, and therefore carries penalties much lighter than those imposed by the Controlled Substances Act. Concerned more with proper testing and labeling of drugs having arguably beneficial effects than with drugs sold solely for illicit purposes, the Food, Drug, and Cosmetic Act is also inapplicable to the analog problem in that the Food and Drug Administration is not properly equipped to investigate or pursue analog traffickers.

The Senate has studied the nature and scope of the analog problem over the course of three extensive hearings conducted this year. On July 18, 1985, Senator Chiles presided over a hearing of the Committee on the Budget in which the problem was described by scientists, victimized families, and State law enforcement officials. [S. Hrg. 99-124.] As Senator Chiles testified before this Committee, the Budget panel "heard story after story about how these basement chemists could and did stay one step ahead of the law in California; how they could produce a deadly chemical for up to 2 years before the California legislature had the time to declare that *specific* chemical combination illegal." That first hearing convinced him, Senator Chiles continued, that the analog threat could present a "public health disaster" in that a back alley chemist "can spend $2,000 on equipment and chemicals and turn two weeks of time into 200 million doses of drugs (with a), potential street value $70 billion."

The findings of the Budget Committee were reinforced and augmented by a July 25, 1985, hearing of the Subcommittee on Children, Family, Drugs and Alcoholism, of the Committee on Labor and Human Resources, chaired by Senator Paula Hawkins. Mrs. Hawkins' subcommittee heard from State and Federal authorities as well as from an independent scientist and two young drug users. The testimony was unequivocal: as Mrs. Hawkins told this Committee, controlled substance analogs (which she branded "high-tech killers") "bring about the same high, the same addiction and the same net death as natural narcotics, but with much greater potency."

Senate testimony has been unanimous in labeling the controlled substance analog problem a growing danger that demands immediate action. Dr. Patrick Hanna, speaking on behalf of the American Chemical Society, summarized to the Committee why the analogs are neither expensive nor difficult to produce (and why, therefore, they present such an urgent threat):

Equipment cost is low;

Equipment and starting chemicals are readily available;

"Recipes" are in published scientific literature;

Training and scientific knowledge of the producer need not be that of a highly trained scientist/technician; and

Quantities produced from a single synthesis are sufficient to last a lifetime.

The problem is heightened because current law provides such a powerful incentive for profiteers to experiment with conventional chemical structures. Seeking to produce narcotics that do not fall within the exact definitions of the CSA schedules, marginal chemists may manufacture novel compounds of unknown pharmacological properties. The resulting products, whether marketed as counterfeits of the drugs they imitate or as new "synthetic drugs," can have unintended effects: witness the 1982 outbreak of Parkinson's disease in California users of the analogs.

In short, the Committee finds that controlled substance analogs present a clear and present danger to our society. Strong measures are needed to attack this problem.

II. Section-by-Section Analysis

Section 1 designates the statute the "Controlled Substance Analogs Enforcement Act of 1985."

Section 2 amends the Controlled Substances Act by creating new felony and misdemeanor offenses in the controlled substances analog realm. This section makes it a crime punishable by imprisonment for 15 years and a $250,000 fine knowingly or intentionally to manufacture or possess with the intent to distribute, or actually to distribute a controlled substance analog intended for human consumption. Simple possession of a controlled substance analog intended for human consumption, if knowing or intentional, is made a misdemeanor offense punishable by up to 1 year imprisonment and a $25,000 fine. These penalties are consistent with those already enacted for similar offenses involving drugs presently listed in schedules I or II of the Controlled Substances Act.

Several specific intent elements are built into the offenses to ensure that legitimate or unintended actions are not punished. First, to be found guilty, an offender's manufacture, distribution, or possession of an illicit substance must have been knowing or intentional; that is, the offender must have known or intended that he was manufacturing, distributing, or possessing a substance that he knew or intended to have the characteristics of a controlled substance analog as defined in section 3 of this legislation. The Committee contemplates, however, that it will not be a defense to this Act that an offender believed a controlled substance analog actually to be a schedule I or II controlled substance itself.

Further, no felony is committed unless it is the offender's intent to distribute a controlled substance analog to one or more other people, or unless he has already actually distributed the substance. Then, too, for an offense to occur, all or part of the substance involved must have been intended for human consumption. This intent requirement was adopted specifically to protect legitimate scientific research. It ensures, for example, that chemists whose laboratory activity is directed solely toward producing industrial chemicals will not be affected by the Act. The phrase "all or part of which substance is intended for human consumption" makes clear that at least part of the *specific batch* of chemicals involved must have been intended for human consumption. Thus, the legitimate researcher who handles controlled substance analogs while conducting early-stage experiments for a project the ultimate end of which may be to produce an approved drug for human consumption is also unaffected by the Act, so long as he does not intend the specific chemicals on hand to be for human consumption.

Section 2 creates a further protection for legitimate research by exempting actions taken in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355]. While the Federal Food, Drug, and Cosmetic Act applies to interstate commerce, the exemptions created here may be obtained even if the project is intended to remain entirely intrastate. Exemptions for investigational use are presently granted routinely to legitimate scientists in the pharmaceutical industry to make use of controlled substances in the course

of their legitimate research. These exemptions would now be expanded to cover legitimate research using analogs of controlled substances as well as research involving controlled substances themselves. This exemption, once obtained, is meant to be as broad as the offense itself. In the opinion of the American Chemical Society, "this language protects legitimate research and development of new pharmaceuticals."

Section 3 provides a two-pronged definition for the term "controlled substance analog." A chemical compound is a controlled substance analog either if it has a chemical structure "substantially similar" to that of any controlled substance listed in schedules I or II under the Controlled Substances Act, or if it was "specifically designed" to produce an effect "substantially similar" to that produced by any controlled substance defined in schedules I or II.

By encompassing entire classes of drugs rather than listing discrete substances to be controlled, this definition discourages attempts to skirt the law through molecular tinkering. While the Committee realizes that this definition is, of necessity, general, the Committee is also convinced that it adequately describes the sorts of drugs that the legislation seeks to bring under control. It would be impossible to list by their specific chemical structures all potential analogs that unscrupulous chemists might produce. As Senator Biden noted during the Committee's consideration of the bill, "dangerous chemists can create new variations faster than health and enforcement officials can identify and control" those analogs.

The Department of Justice was entirely accurate in summarizing the purpose of this legislation as being "to prohibit persons who specifically set out to manufacture or to distribute drugs which are substantially similar to the most dangerous controlled substances from engaging in this activity." The first prong of the controlled substance analog definition is therefore aimed at those who would traffic in drugs the chemical structure of which is modeled upon that of heroin, cocaine, or other schedule I or II drugs.

All controlled substance analogs of which the Committee is presently aware meet this first, alternative, test. In determining whether a substance does have a chemical structure "substantially similar" to that of a schedule I or II controlled substance, the trier of fact will presumably consider the testimony of expert chemists who have performed laboratory analyses of the drug's molecular makeup. The Committee concurs with the appraisal of the American Chemical Society that the term "substantially similar" chemical structure is meaningful to scientists and capable of reasoned interpretation by the trier of fact. If a drug has been patterned after a controlled substance, its strong chemical similarities to the parent substance can be demonstrated.

Under the second definitional prong, a compound is a "controlled substance analog" if it was "specifically designed to produce an effect substantially similar" to that produced by any schedule I or II controlled substance. This test therefore hinges upon the intent with which the drug was manufactured, although the effect that the substance actually produces may well be relevant in evaluating that intent. The Committee intends that this intent standard, when coupled with the requirement that the effect intended be "substantially" similar to that of a dangerous scheduled substance, exclude

alcohol, tobacco, caffeine and other legitimate consumer products from the controlled substance analog category. Not only do these products operate on the body through different biochemical mechanisms than do schedule I or II drugs, but they are also not specifically designed to produce that degree of effect induced by such scheduled drugs.

As the Department of Justice notes:

> [t]he effect prong of the definition will be most useful [to the prosecution] in situations in which the defendant makes statements to third parties or to law enforcement officials of his or her intent regarding the drug and the effects it has been designed to produce.

Other evidence as to a drug's intended effect might include eyewitness accounts of the reactions experienced by prior users of the drug, or pharmacological evidence relating to the drug's expected abuse potential or the psychological or physiological dependence it is capable of producing.

The definition of "controlled substance analog" contained in this section, therefore, closes the present loopholes in the Controlled Substances Act while still specifying a comprehensible standard of conduct. A substance fitting either of the two prongs of the controlled substance analog definition qualifies as such an analog. The legislation's message to illicit drug traffickers is clear: no longer will you remain immune from punishment when purposefully dealing in drugs that imitate the most dangerous compounds defined by law. When such chemical copies are intended for human consumption and do not fall under the exceptions set out in section 2 of the legislation, simulation is no defense.

Section 3 also specifies that the term "human consumption" is meant broadly and include consumption by application, injection, inhalation, or ingestion.

III. Committee Action

The Senate Committee on the Judiciary conducted a hearing on S. 1437 on September 18, 1985. The Committee heard from Senators Hawkins and Chiles, who described previous Senate study of the controlled substance analog problem. Also testifying were: Stephen S. Trott, Assistant Attorney General, Criminal Division, United States Department of Justice; Gene Haislip, Deputy Assistant Administrator, Drug Enforcement Administration; Ellis K. Fields, President, American Chemical Society; and Patrick E. Hanna, Professor, Medicinal Chemistry and Pharmacology, University of Minnesota.

On October 3, 1985, the Committee ordered S. 1437 reported with an amendment in the nature of a substitute offered by the chairman and ranking member. The amendment made certain technical corrections to the bill as introduced; further, it substituted the phrase "controlled substance analog" for the perhaps too enticing term "designer drug." Moreover, the Committee substitute created a misdemeanor offense for simple possession of a controlled substance analog, and clarified that a crime is committed only if all or part of the specific substance in question was intended for human

consumption. The Committee adopted the substitute by unanimous voice vote.

IV. Regulatory Impact Statement

Pursuant to paragraph 11(b), rule XXVI, of the Standing Rules of the Senate, the Committee has concluded that the bill may impose slight regulatory costs upon a very small number of businesses and individuals that make legitimate use of controlled substance analogs under exceptions provided by the legislation. Because the bill's prohibitions do not apply to experimentation with chemical substances that are not themselves intended for human consumption, most legitimate research in the controlled substance analog area will be unaffected by passage of the Act.

Controlled Substance Analogs that are intended for human consumption may be used in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C 355]. Such applications are currently required of those who seek to make legitimate use of schedule I or II controlled substances, and the Committee heard testimony from a representative of the American Chemical Society that, "[m]y colleagues in the pharmaceutical industry do this routinely." The D.E.A. testified that "this is a reasonably simple process . . . not regarded as a difficult or heavy burden for legitimate scientists and research activity." Assistant Attorney General Trott added that the requirement "is easy to comport with if you are an honest person simply pursuing scientific research."

V. Cost of Legislation

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 18, 1985.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1437, the "Controlled Substance Analogs" Enforcement Act of 1985, as ordered reported by the Senate Committee on the Judiciary, October 3, 1985. We estimate that no significant cost to the federal government, and no cost to state or local governments would result from enactment of this bill.

S. 1437 adds a section to the Controlled Substances Act which makes it illegal to manufacture, distribute, or possess a controlled substance analog intended for human consumption. The bill specifies maximum fines and jail sentences that may be imposed on offenders.

This bill would aid prosecution in cases brought by the Drug Enforcement Administration involving controlled substance analogs.

It would not significantly change investigative efforts or costs, but would make possible conviction in some cases where it is currently not possible.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by S. 1437 as reported are shown as follows; new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

For Legislative History of Act, see p. 4566

Public Law 91-513; 84 Stat. 1236

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DEFINITIONS

Sec. 102. As used in this title:

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(31) The term "controlled substance analog" as used in section 403A means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in schedules I or II or that was specifically designed to produce an effect substantially similar to that of a controlled substance in schedules I or II. Examples of chemical classes in which controlled substance analogs are found include, but are not limited to, the following: phenethylamines, N-substituted piperidines, morphinans, ecogonines, quinazolinones, substituted indoles, and arylcycloalkylamines.

(32) The term "human consumption" includes application, injection, inhalation, or ingestion.

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PROHIBITED ACTS C—PENALTIES

SEC. 403. (a) It shall be unlawful for any person knowingly or intentionally—

* * * * * * *

§ 403A. Prohibited acts D

Any person who knowingly or intentionally manufacturers with intent to distribute, possesses with intent to distribute, or distributes a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $250,000, or imprisoned not more than fifteen years, or both. Any person who knowingly or intentionally possesses a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $25,000 or imprisoned not more than one year, or both. This section does not apply to a person who manufactures, possesses, or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). For purposes of this section, section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

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Calendar No. 440

99TH CONGRESS
1st Session

SENATE

REPORT
99-202

PREVENTING THE SEXUAL MOLESTATION OF CHILDREN IN INDIAN COUNTRY

FILED NOVEMBER 26, 1985.—Ordered to be printed under authority of the order of the Senate of NOVEMBER 23 (legislative day, NOVEMBER 18), 1985.

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1818]

The Committee on the Judiciary, to which was referred the bill (S. 1818), to prevent the sexual molestation of children in Indian country, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. PURPOSE

The purpose of S. 1818 is to prevent the sexual molestation of children in Indian country by amending the Major Crimes Act to cover specifically "felonious sexual molestation of a minor."

II. STATEMENT

S. 1818 would add the new offense of "felonious sexual molestation of a minor" to those offenses presently included in 18 U.S.C. 1153, the Major Crimes Act, which applies to offenses committed by Indians in the Indian country.[1] The significance of section 1153 can best be understood by reference to section 1152. Under section 1152, the "general laws of the United States," that is, those applicable in the special maritime and territorial jurisdiction of the United States, are made applicable to the Indian country. However, the second paragraph of section 1152 provides an exception for offenses committed by one Indian against the person or property of

[1] The term "Indian country" is defined in 18 U.S.C. 1151 to include, inter alia, Indian reservations.

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another Indian. These offenses can generally only be prosecuted in tribal court where the maximum punishment is currently up to 6 months of imprisonment and/or up to a $500 fine.[2] Since tribal court punishment has long been felt to be inadequate for the most serious offenses committed by one Indian against another, the Major Crimes Act was enacted as an exeption to the second paragraph of 18 U.S.C. 1152.[3] Section 1153 has been amended from time to time and now includes 16 serious offenses.

Currently, section 1153 reaches the crimes of rape, involuntary sodomy, and carnal knowledge of a female under the age of 16, when those crimes are committed by an Indian in Indian country. Although recently amended by Public Law 98–473 to add the offense of involuntary sodomy, the statute still lacks adequate coverage of nonforcible sexual conduct committed by an adult Indian on Indian children.

Serious offenses that are not now covered include adult sexual contact with male or female children other than rape, involuntary sodomy or carnal knowledge. Many U.S. attorneys have reported a troubling increase in incidents on Indian reservations. Amendment of the Major Crimes Act is necessary to permit effective enforcement, since without the amendment these offenses, which nearly all States treat as felonies, are prosecutable only in a tribal court, which may administer a maximum punishment of up to only 6 months imprisonment and/or a fine up to $500, according to 25 U.S.C. 1302(7).

Moreover, the committee believes that amendment of the Major Crimes Act is necessary to increase the protection of children on Indian reservations and to render more similar the punishment for such crimes between Indian and non-Indian offenders. A non-Indian who commits the crime of sexual molestation of a minor in Indian country is punishable under the far more stringent provisions of State law, either in State court when the victim is a non-Indian, or in Federal court by assimilation under 18 U.S.C. 1152 when the victim is an Indian.

The bill adds the offense of "felonious sexual molestation of a minor" to section 1153, thus permitting State law to be used in Federal court to prosecute Indians as well as non-Indian sexual molesters of children in Indian country. The description of the offense as "sexual molestation of a minor" is, like the recent addition of "involuntary sodomy" meant to be generic in nature. Thus, it would not alter whether the particular State denominated its offense as "sexual molestation" or by some other title such as "indecent liberties" or "sexual contact" with children.

So long as the State has on its books a felony offense that proscribes the conduct of nonforcible sexual abuse of the person of a minor, also as defined by State law, that offense and the accompanying penalties will be incorporated into section 1153. The offense must, however, be a felony. This qualification ensures that, as with all other offenses in section 1153, only the major varieties of the offense will be subject to Federal jurisdiction, maintaining exclusive tribal jurisdiction over the lesser offenses.

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[2] 25 U.S.C. 1302(7).

[3] See act of Mar. 3, 1885, sec. 9, 23 Stat. 385.

In testimony on November 19, 1985, by Lois Haight Herrington, Assistant Attorney General, Office of Justice Assistance, U.S. Department of Justice, before the full committee, Mrs. Herrington stated that this amendment, in conjunction with the offenses currently listed in the Major Crimes Act, would cover any and all defined serious sexual offenses against Indian children by Indians. Mrs. Herrington also offered the Department's strongest endorsement of the bill.

The bill was also endorsed at the November 19 hearing by Ms. Suzan Shown Harjo, executive director of the National Congress of American Indians, who saw it as necessary to fight the increase of nearly 25 percent in Indian child sexual abuse from 1983 to 1984, up from 685 reported cases in 1983 to 932 reported cases in 1984. The bill was also endorsed through written testimony submitted at the hearing by the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana. Finally, the bill is also endorsed by the Bureau of Indian Affairs.

III. History of the Legislation

Senators Jeremiah Denton Republican, of Alabama, and Dennis DeConcini, Democrat, of Arizona, introduced S. 1818 on November 1, 1985. The bill was referred to the Judiciary Committee, which on November 12, 1985, referred it to the Subcommittee on Juvenile Justice. Senators Denton and DeConcini requested that the bill be held at full committee, and Senator Arlen Specter, Republican, of Pennsylvania, chairman of the subcommittee, concurred. Accordingly, on November 14, 1985, the Subcommittee on Juvenile Justice was dischrged from further consideration. On November 19, 1985, the full Judiciary Committee conducted a hearing on the bill.

IV. Vote of the Committee

On November 21, 1985, with a quorum present, by voice vote and without objection heard, the committee ordered S. 1818 favorably reported without amendment.

V. Regulatory Impact Statement

In compliance with paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committe has concluded that the bill will have no regulatory impact.

VI. Cost of the Legislation

In accordance with paragraph 11(a), rule XXVI of the Standing Rules of the Senate, the committee offers the following report of the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 22, 1985.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1818, a bill to prevent the sexual molestation of children

in Indian country, as ordered reported by the Senate Committee on the Judiciary, November 21, 1985.

This bill makes the crime of sexual molestation of an Indian minor, if committed by an Indian in Indian country, prosecutable in Federal court. Under current law, such a crime is only prosecutable in a tribal court. We estimate that enactment of the bill would result in no significant cost to the Federal Government and no cost to State or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

VII. CHANGES IN THE EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by S. 1818 are shown as follows: Existing law to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.

UNITED STATES CODE

* * * * * * *

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES

* * * * * * *

CHAPTER 53—INDIANS

* * * * * * *

§ 1153. Offenses committed within Indian country

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping maiming, rape, involuntary sodomy, *felonious sexual molestation of a minor,* carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assualt with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

As used in this section, the offenses of burglary, involuntary sodomy, *felonious sexual molestation of a minor,* and incest shall be defined and punished in accordance with the laws of the State in

which such offense was committed as are in force at the time of such offense.

In addition to the offenses of burglary, involuntary sodomy, *felonious sexual molestation of a minor,* and incest, any other of the above offenses which are not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

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